

REMARKS

In response to the Office Action dated February 3, 2009, Applicants herein below set forth their response. The Office Action sets forth a restriction requirement to one of the following inventions:

Group I. Claims 15, 18, 19, 30, 33, 34, 35, 36 and 41 drawn to a primary station transmitting a random access channel status message that includes an indicated highest data rate of each of a plurality of random access channels and receiving these message at a secondary station and selecting a random access channel based on the received message, classified in class 370 subclass 441;

Group II. Claims 20, 23, 24, 37 and 38 drawn to a primary station comprising a transmitter configured to transmit a random access channel status message, a controller that is configured to determine an availability of the channels, determine a highest available data rate and create the random access status message, classified in class 370 subclass 437; and

Group III. Claims 25, 28, 29, 39 and 40 drawn to a secondary station comprising a receiver for receiving the random access channel status message, a controller that is configured to select a random access channel based on the received message, and create an access request, and a transmitter that is configured to transmit the access request to the primary station, classified in class 370 subclass 439;

It is respectfully submitted that the current application has been previously examined on the merits with pending Claims 15, 18-20, 23-25, 28-30, 33 and 34. These claims, as well as

dependent Claims 35-41 which have been recently added, have now been restricted to three different groups. Applicants do not believe there is any burden placed on the examining corps to continue to examine all of the claims of the application as one group. Accordingly, Applicants respectfully request that all claims in the application be examined together as one application and that the Restriction Requirement be withdrawn.

However, if the Examiner decides to maintain the restriction, in the interests of furthering prosecution on the merits, Applicants hereby provisionally elect with traverse the invention of Group I for prosecution on the merits in this application. The invention of Group I or the elected invention encompasses Claims 15, 18, 19, 30, 33, 34, 35, 36 and 41.

Applicants specifically reserve the right under 35 U.S.C. §121 to prosecute the non-elected subject matter by way of one or more separate divisional applications.

In view of the foregoing, early and favorable consideration of the claims of the application is respectfully requested.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to contact the undersigned.

Respectfully submitted,

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